

Case # ? A11925

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

JAMES MARTIN MARQUEZ,

Defendant.

Case No. 3AN-12-03395 CR

ORDER DENYING MOTION TO COMPEL

This represents the court's second examination of Mr. James Martin Marquez's Motion and Memorandum for Order Compelling Production of Records related to an abortion allegedly received by Ms. Carla Webb.¹ For the reasons set forth below, the Mr. Marquez's Motion to Compel is DENIED.

I. BACKGROUND

Mr. Marquez originally filed the Motion to Compel before Judge Smith, urging *ex parte* consideration.² Judge Smith denied the Motion to Compel. Mr. Marquez filed a motion for reconsideration, raising several new arguments. Judge Smith denied that motion too. The case proceeded to trial, and a jury convicted

¹ Mot. and Mem. for Order Compelling Production of Records [hereinafter Motion to Compel].

² Motion to Compel.

Mr. Marquez of murder for killing Ms. Webb. Mr. Marquez appealed to the Alaska Court of Appeals, arguing that Judge Smith erred by denying the motions. The Court of Appeals found that Mr. Marquez had not preserved the issue for review.³ The Alaska Supreme Court disagreed and remanded the issue to the Court of Appeals.⁴ The Court of Appeals determined it could not resolve the issue on the existing record and remanded the issue to this court, directing the court to give the State an opportunity to respond to the original Motion to Compel.⁵

The State filed its Opposition, Mr. Marquez filed his Reply, and the parties defended their positions at oral argument.⁶ This court issued its Order Denying the Motion to Compel, finding, in part, that Mr. Marquez had not made a requisite showing of relevance and materiality to the preparation of a defense.⁷ The Court of

³ *Marquez v. State*, No. A-11925, 2019 WL 211490, at *4 (Alaska App. Jan. 16, 2019).

⁴ *Marquez v. State*, No. S-17376 (Alaska May 21, 2019).

⁵ *Marquez v. State*, No. A-11925, 2019 WL 4302859, at *1 (Alaska App. Sept. 11, 2019).

⁶ Opp'n to Mot. and Mem. for Order Compelling Production of Records [hereinafter Opposition]; Reply RE: Mot. for Order Compelling Production of Records [hereinafter Reply]; Oral Argument 9:08:15-9:46:45 (Feb. 20, 2020).

⁷ Order Denying Motion to Compel 4 (March 3, 2020) (citing Alaska R. Crim. P. 16(b)(7)).

Appeals issued an order indicating that finding was incorrect and remanded for further consideration.⁸

II. DISCUSSION

Mr. Marquez argues that Ms. Webb's medical records are relevant and material to the preparation of a defense and therefore discoverable.⁹ Specifically, Mr. Marquez contends that the records could contain documentation of an abortion and/or aftercare received by Ms. Webb, which in turn could support a heat of passion defense to the underlying homicide charges.¹⁰ Therefore, Mr. Marquez seeks copies of any records, reports, or notes relating to pre-natal care, abortion procedures, or post-abortion care involving Ms. Webb from three Anchorage health care facilities: Alaska Women's Health Services, Planned Parenthood, and Providence Medical Center. Mr. Marquez notes that Planned Parenthood and Alaska Women's Health Services are the facilities likely to have performed an abortion in the Anchorage area, while Providence Medical Center may have provided aftercare.¹¹ Ultimately, Mr. Marquez requests the court order disclosure

⁸ Order, No. A-11925 (Sept. 21, 2020).

⁹ Reply 1.

¹⁰ Motion to Compel 2.

¹¹ *Id.*

of the records, if any, but offers no evidence that Ms. Webb visited any of the identified facilities for pregnancy or abortion-related services.

As a factual basis for his request, Mr. Marquez relies on his trial testimony and briefing on the Motion to Compel.¹² In the Motion to Compel, Mr. Marquez asserted “a good faith belief Ms. Webb received an abortion and disclosed its occurrence to Mr. Marquez immediately prior to the [homicide].”¹³ Mr. Marquez contends that this demonstrates sufficient personal knowledge that Ms. Webb received an abortion. To the extent the Motion to Compel failed to present a clear factual basis for the request, Mr. Marquez argues that such a deficiency was resolved by his trial testimony.¹⁴

At trial, Mr. Marquez testified that Ms. Webb told him she was pregnant with his child around December 14, 2011.¹⁵ Between December, 2011, and April, 2012, the couple discussed having a baby, although Ms. Webb never told Mr. Marquez when the baby was due.¹⁶ Mr. Marquez further stated that he noticed Ms.

¹² See Oral Argument 9:13:49.

¹³ Motion to Compel 1-2.

¹⁴ Oral Argument 9:18:27.

¹⁵ Trial Transcript at 276. See also Oral Argument 9:34:27; Proposed Order Compelling Production of Records (stating that Ms. Webb’s birthday is December 14, 1964).

¹⁶ Trial Transcript at 276.

Webb gaining weight and that the couple argued about Ms. Webb's drug use.¹⁷ On April 9, 2012, the date of the homicide, Mr. Marquez believed Ms. Webb was still pregnant. Immediately prior to her killing, however, Ms. Webb told Mr. Marquez she had received an abortion.¹⁸ Mr. Marquez testified that this statement prompted him to kill Ms. Webb.¹⁹

Mr. Marquez presents no factual basis for his request beyond these statements. He presents no affidavits, statements from third parties, or documentary evidence, despite having opportunities to do so throughout briefing process, at trial, and during oral argument. Furthermore, Mr. Marquez presents no specifics regarding the three health care facilities he seeks records from. He presents no evidence that Ms. Webb ever visited Planned Parenthood or Alaska Women's Health Center. Instead, he singles out the facilities as the most likely to have performed an abortion in the Anchorage area.²⁰ Mr. Marquez makes no showing that the alleged abortion took place in Anchorage, however, and does not address the possibility that Ms. Webb may have traveled elsewhere for such a procedure. Mr. Marquez also argues that Providence Medical Center may have

¹⁷ Trial Transcript at 268.

¹⁸ Trial Transcript at 268.

¹⁹ Trial Transcript at 276.

²⁰ Motion to Compel 1-2.

records of Ms. Webb's aftercare because she "occasionally received care" at the facility in the past.²¹ Mr. Marquez does not specify what type care Ms. Webb received or when she visited Providence Medical Center, however.

The Court of Appeals has indicated that the existence of the requested records would be relevant to the preparation of a heat of passion defense.²² In its original remand, the Court of Appeals stated that if "the superior court concludes it must determine whether the requested records actually exist, the court is authorized to call for *in camera* production of the records."²³ This illustrates the distinction between Mr. Marquez's request and those at issue in the Alaska's most prominent cases governing discovery of sensitive information.²⁴ In *Booth* and *N.G.*, there was no debate over whether the requested records in fact existed. Rather the question was whether the files were likely to contain evidence that was relevant and/or material, thus justifying discovery.²⁵ Here, the mere existence of

²¹ Motion to Compel 2.

²² See Order, No. A-11925 (Sept. 21, 2020). "If there are records showing that [Ms. Webb] underwent an abortion shortly before the homicide, this would make it more likely that [Mr. Marquez] was telling the truth about what [Ms. Webb] said to him."

²³ *Marquez v. State*, No. A-11925, 2019 WL 4302859, at *1 (Alaska App. Sept. 11, 2019).

²⁴ See e.g. *Booth*, 251 P.3d 369; *N.G. v. Superior Court*, 291 P.3d 328 (Alaska App. 2012).

²⁵ *Booth*, 251 P.3d at 376; *N.G.*, 291 P.3d at 338.

the records, if any, has been determined relevant by the Court of Appeals. In its second remand, the Court of Appeals indicated that it was error for this court to assess the issue of relevance as opposed to making a “finding as to whether there was reason to believe that the requested medical records existed.”²⁶ The court will now make such a finding.

Mr. Marquez has not provided this court with reason to believe the requested records exist at the identified facilities. Notably, he requests records from two different abortion providers in Anchorage. If Ms. Webb had received such a procedure, records documenting its occurrence would exist at only one facility. This fact alone demonstrates that Mr. Marquez’s request constitutes the very type of “fishing expedition” criticized in the body of Alaska case law on the subject.²⁷

Furthermore, Mr. Marquez seeks records from Providence Medical Center simply because Ms. Webb occasionally visited the facility for care in the past. As Alaska’s largest hospital, Providence provides a wide range medical services, many of which are unrelated to reproductive care. Because Mr. Marquez provides no information as to when or why Ms. Marquez visited Providence, the court finds

²⁶ Order, No. A-11925 (Sept. 21, 2020).

²⁷ See generally *Dana v. State*, 623 P.2d 348 (Alaska App. 1981); *March v. State*, 859 P.2d 714 (Alaska App. 1993); *Cockerham v. State*, 933 P.2d 537 (Alaska 1997); *Booth v. State*, 251 P.3d 369 (Alaska App. 2011).

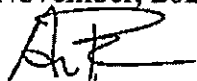
no reason to believe records relating to the alleged abortion would exist at the facility.

III. CONCLUSION

For the reasons set forth above, the Mr. Marquez's Motion to Compel is DENIED.

IT IS SO ORDERED.


Dated this 23rd day of November, 2020, at Anchorage, Alaska.



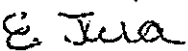
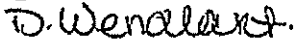
ANDREW PETERSON
Superior Court Judge

I certify that on 11/23/2020 a copy of the above was delivered to:

T. Bordon
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Clerk of Appellate Courts



T. Harris, Judicial Assistant



D. Wendland